



# IN THE CIRCUIT COURT OF MCDONALD COUNTY, MISSOURI

Judge or Division: TIMOTHY WAYNE PERIGO	Case Number: 06MC-CV00117
Plaintiff/Petitioner: TRI-STATE HDWE, INC	Plaintiff's/Petitioner's Attorney/Address: MERL LYNN STANLEY Jr. P O BOX 1626 JOPLIN, MO 64801
vs.	
Defendant/Respondent: JOHN DEERE COMPANY	Court Address: P.O BOX 157 PINEVILLE, MO 64856
Nature of Suit: CC Other Miscellaneous Actions	

(Date File Stamp)

## Summons for Service by Registered or Certified Mail

The State of Missouri to: JOHN DEERE COMPANY  
Alias:

4401 BLAND ROAD, SUITE 200  
RALEIGH, NC 27602



You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner, or Plaintiff/Petitioner, if pro se, at the above address all within 30 days after the return registered or certified mail receipt signed by you has been filed in this cause. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in the petition.

Feb 10, 2006

Date Issued

Mene Hall  
Clerk

Further Information:  
sent certified mail

## Certificate of Mailing

I certify that on Feb 10, 2006 (date), I mailed a copy of this summons and a copy of the petition to Defendant/Respondent JOHN DEERE COMPANY by registered or certified mail, requesting a return receipt by the addressee only, to the said Defendant/Respondent at the address furnished by Plaintiff/Petitioner.

Feb 10, 2006

Mene Hall  
Clerk

By: Cheryl Wimper  
Deputy

For Court Use Only: Document ID # 06-SMCM-24

FEB - 6 2006

IN THE CIRCUIT OF MCDONALD COUNTY, MISSOURI  
AT PINEVILLECIRCUIT CLERK  
McDONALD COUNTY MO

TRI-STATE HDWE. INC., )  
vs. Plaintiff, ) ) No. 06MC-CV-0017  
JOHN DEERE COMPANY, a Division of )  
Deere & Company, )  
Defendant. )

**PETITION**

Comes now plaintiff and for its cause of action against defendant, states as follows:

**COUNT I****WRONGFUL TERMINATION**

1. Plaintiff is a Missouri corporation authorized and doing business in the State of Missouri with its principal office located at 107 Main Street, South West City, McDonald County, Missouri.
2. Defendant is a foreign corporation with its principal office at 4401 Bland Road, Suite 200, Raleigh, North Carolina.
3. That plaintiff is a farm equipment dealer as set out in RSMo. § 407.838.
4. That defendant wrongfully terminated plaintiff's franchise.
5. That pursuant to RSMo. §407.848, plaintiff is entitled to judgment against defendant for damages for the unlawful termination and the cost of this action including a reasonable attorney fee.
6. That as a direct result of defendant's wrongful conduct, plaintiff has been damaged in that it has lost a valuable franchise that it had spent years and money

developing, has lost sales that would have been made and lost services that would have been performed if defendant had not breached RSMo. §407.838, and it will lose sales and income in the future because of defendant's wrongful termination.

## **COUNT II**

### **BREACH OF CONTRACT**

Comes now plaintiff and for Count II of its action against defendant, states as follows:

7. Plaintiff re-alleges each and every allegation set out in paragraphs 1 through 6 of Count I as if set out herein in haec verba.

8. Plaintiff had a contract with defendant under which plaintiff was a John Deere dealer authorized to sell and service John Deere products.

9. Under that agreement, defendant had an implied obligation of good faith and fair dealing.

10. Plaintiff performed all obligations required by the agreement.

11. Defendant breached the agreement by failing to timely supply plaintiff with merchandise, delivering inventory after the growing season had ended and by canceling orders placed by plaintiff.

12. That as a direct result of defendant's breach, plaintiff has been damaged in that it has lost a valuable franchise that it had spent years and money developing, has lost sales that would have been made and lost services that would have been performed, and will lose sales and income in the future.

**COUNT III**

**INTERFERENCE WITH A BUSINESS EXPECTANCY**

Comes now plaintiff and for Count III of its action against defendant, states as follows:

13. Plaintiff re-alleges each and every allegation set out in paragraphs 1 through 6 of Count I and paragraphs 7 through 12 of Count II as if set out herein in haec verba.

14. After defendant informed plaintiff it would terminate its franchise, plaintiff located several buyers for the franchise and its stock of merchandise.

15. The buyers were ready, willing and able to purchase plaintiff's franchise and merchandise for good and valuable consideration.

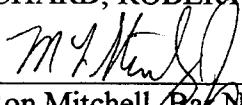
16. Plaintiff requested the defendant approve these sales.

17. Defendant knew the plaintiff had a business expectancy with the individuals but in restraint of trade, with bad motive and without justification, defendant refused to approve any of the sales, and moreover; would not even speak with other interested buyers.

18. That as a direct result of defendant's interference and refusal to approve these sales to ready, willing and able buyers, plaintiff has been damaged in that it was forced to sell its merchandise at an auction at a greatly discounted rate, and plaintiff received no money for the franchise it had spent years and money developing when defendant took the franchise away and awarded it to one of its own employees, therefore; plaintiff is entitled to lost profit for the sale of its franchise and merchandise and to punitive damages.

WHEREFORE, in addition to the actual damages suffered by plaintiff, plaintiff prays for judgment of punitive damages against defendant that will serve to deter defendant from like behavior in the future.

BLANCHARD, ROBERTSON, MITCHELL & CARTER, P.C.

By 

Ron Mitchell, Bar No. 24031  
M. Lynn Stanley, Jr., Bar No. 51840  
320 West 4th Street, P. O. Box 1626  
Joplin, MO 64802  
(417) 623-1515

ATTORNEYS FOR PLAINTIFF



**JOHN DEERE**

John Deere Company  
11145 Thompson Ave., Lenexa, KS 66219 USA  
Phone: 913-310-8848 Fax: 913-310-8875  
E-mail: PhillipsWally@JohnDeere.com

**Wally Phillips**  
Division Manager, Marketing

**3<sup>RD</sup> YEAR LETTER**

**CONFIDENTIAL**  
**Certified Mail**  
**Return Receipt Requested**

January 15, 2004

Tri-State Hardware Inc.  
107 Main  
South West City, Missouri 64863

Attention: Mr. Charles Wolfe

Your market share performance for Oct. 2001 was 30.1% and Oct. 2002 was 18.2%. Last year we discussed your historical market share was still unacceptable and established a minimum goal of 36.3% ending Oct. 2003. Please consider this letter confirmation of your conversation, which took place with Ben Dohrmann, which showed your market share at 23.1% ending Oct. 2003.

Section 3 of the Dealer Agreement provides that the dealer's appointment as a John Deere Dealer may be cancelled "if the Company believes the dealer is not fulfilling the requirements of his appointment." One of the requirements of your appointment as a John Deere dealer is set forth in Section 1 (d) of the Dealer Agreement. That requirement states the dealer agrees "to achieve sales objectives and market share penetration within the dealer's area of responsibility satisfactory to the Company."

For fiscal year ending Oct. 2004 we expect Tri-State Hardware Inc. to achieve a minimum market share of 39.3%. Failure to achieve these minimums and failure to maintain these increases may result in termination of your appointment as a John Deere dealer.

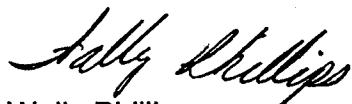
**EXHIBIT "1"**

Page Two

This market share requirement is an absolute minimum as it is well below Branch, Division, or Territory market share averages achieved by our dealer organization. We want to assist and support your efforts to achieve the minimum market share requirements we have established. Please complete and implement your 2004 marketing plan with the support of your TM, AMPS & AMPSS.

We reserve the right to adjust market share requirements as we deem appropriate in light of future conditions.

Sincerely,



Wally Phillips  
Division Manager, Marketing

cc: Bob Timmons  
Larry Dow  
Doug Allen  
Brian Payne  
Bill Saxton  
Ben Dohrmann  
Jeremy Knuth  
Steve Cadman

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Report: Model Summary

Current Tr Nov 1996 - Oct 1997

Product Fa 2wd Tractors < 80 Hp

State(s): Missouri

State	Product	Model Class	Size Class	Current Time Period			Nov 1996 - C Previous Time Period			% Change		
				Ind	Deere	Deere Shr	Ind	Deere	Deere Shr	Ind	Deere	
Total				2,448	743	30.40%	2,068	693	33.50%	18.4	7.2	
MO	2-Wheel Drive Tractors			2,448	743	30.40%	2,068	693	33.50%	18.4	7.2	
	4010	4100	< 20	423	117	27.70%	373	87	23.30%	13.4	34.5	
	790	4210	.20 < 30	765	200	26.10%	633	200	31.60%	20.9	0	
	990	4500/130	< 40	307	68	22.10%	243	54	22.20%	26.3	25.9	
	4710	5105	40 < 50	252	65	25.80%	224	71	31.70%	12.5	-8.4	
	5303	5310	50 < 60	232	99	42.70%	177	73	41.20%	31.1	35.6	
	5410	5420	60 < 70	266	110	41.40%	225	112	49.80%	18.2	-1.8	
	5510	5520	70 < 80	203	84	41.40%	193	96	49.70%	5.2	-12.5	

## EXHIBIT "2"



**SMPDS Whole Goods - US DOLLARS - Product Short Report**

Data updated: March 19, 2000

Organization: 057018 JOPLIN, MO

All Dealers

Product Groups:

Commercial Products  
Top Level Products

Product	Month-to-Date			Year-to-Date			Rolling 12 (R52)			Inventory Orders
	MTD	LMTD	Diff	YTD	LYTD	Diff	Curr	Prev	% Chg	
<u><u>** 5000/510/500/500</u></u>	0	0	0	0	18,996	-19,996	0	41,552	0	3
<u><u>** LOADERS</u></u>	0	0	0	0	0	0	0	0	0	2
<u><u>** TOTAL CUTTERS</u></u>	0	0	0	0	0	0	0	0	0	4
<u><u>COMM T ROTARY TILLER</u></u>	0	0	0	0	0	0	2,207	2,207	1,142	4
<u><u>COMMERCIAL LOADERS</u></u>	0	0	0	0	0	0	0	0	0	0
<u><u>** COMPACT TRACTORS</u></u>	0	0	0	0	0	0	17,119	17,119	48,698	7
<u><u>** TOT COMMRCIAL VEH</u></u>	0	0	0	0	11,111	-11,111	30,778	19,667	23,245	6
<u><u>** FRNT MNT ZTRAK MWR</u></u>	0	0	0	0	0	0	6,259	6,259	0	3
<u><u>** COMM FM MOWERS</u></u>	0	0	0	0	0	0	0	0	0	0
<u><u>** COMM W/B MOWERS</u></u>	0	0	0	0	0	0	0	16,140	0	0
<u><u>TRACTORY MOWERS</u></u>	0	0	0	0	0	0	0	0	0	0
<u><u>COMM/MAT COLLECT/SYS</u></u>	0	0	0	0	0	0	1,761	1,761	3,225	9
Totals	0	0	0	0	81,045	-81,045	49,938	138,294	64,144	38

Please forward comments to SMPDS Support  
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Return to Request

Help

1997 \$ 17,522.00  
1998 \$ 107,187.00  
1999 \$ 81,045.00

COMMERCIAL  
SETTLEMENTS

2000 \$ - 0 -

EXHIBIT "3"

DEFENDANT'S EXHIBIT

FILED  
GENE HALL

FEB - 6 2006

CIRCUIT CLERK  
McDONALD COUNTY MO

IN THE CIRCUIT OF MCDONALD COUNTY, MISSOURI  
AT PINEVILLE

TRI-STATE HDWE. INC., )  
vs. Plaintiff, ) ) No. 06MC-CV00117  
JOHN DEERE COMPANY, a Division of )  
Deere & Company, )  
Defendant. )

NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL

TO: JOHN DEERE COMPANY, a Division of Deere & Company,  
One John Deere Place, Moline, IL 61265

The enclosed summons, Petition, Request For Production, and  
Interrogatories are served pursuant to section 506.150 RSMo.

You must complete the acknowledgment part of this form and  
return one copy of the completed form to the sender within  
thirty days.

You must sign and date the acknowledgment. If you are  
served on behalf of a corporation, unincorporated association,  
including a partnership, or other entity, you must indicate  
under your signature your relationship to that entity. If you  
are served on behalf of another person and you are authorized to  
receive process, you must indicate under your signature your  
authority.

If you do not complete and return the form to the sender  
within thirty days, you or the party on which behalf you are

being served may be required to pay any expenses incurred in serving a summons and petition in any other manner permitted by law.

If you do complete and return this form, you or the party on whose behalf you are being served must answer the petition within thirty days of the date you sign the acknowledgment below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the petition.

I declare, under penalty of filing a false affidavit, that this Notice and Acknowledgment of Receipt of Summons, Petition, Request for Production and Interrogatories were mailed on February 3, 2006.

BLANCHARD, ROBERTSON, MITCHELL & CARTER, P.C.

By \_\_\_\_\_

  
Ron Mitchell, Bar No. 24031  
M. Lynn Stanley, Jr., Bar No. 51840  
320 West 4th Street, P. O. Box 1626  
Joplin, MO 64802  
(417) 623-1515

ATTORNEYS FOR DEFENDANTS

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND PETITION

I declare, under penalty of filing a false affidavit, that I received a copy of the Summons, Petition, Request for Production, and Interrogatories in the above captioned matter.

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Signature

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Relationship To Entity/Authority  
Receive Service of Process

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Date